

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FT. SMITH DIVISION

LESLIE KAUP, individually and on behalf of
all others similarly situated,

Plaintiff,

V.

BALDOR ELECTRIC COMPANY,

Defendant.

Civil No. 2:17-cv-2049

**SECOND JOINT MOTION (WITH INCORPORATED BRIEF) FOR PRELIMINARY
APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT AND NOTICE
TO THE SETTLEMENT CLASS**

COMES NOW Plaintiff Leslie Kaup and Opt-In Plaintiff Wesley Yoakum, individually and on behalf of themselves and all others similarly situated (“Plaintiffs”) and Defendant Baldor Electric Company (“Baldor” or “Defendant”) and jointly submit this Second Motion for Preliminary Approval of Class and Collective Action Settlement and Notice to the Settlement Class.

I. INTRODUCTION

On January 16, 2018, Plaintiff Kaup and Defendant file their Motion to Certify Class and for Preliminary Approval of the Parties Settlement Agreement. *See* Doc. No. 25. On May 8, 2018, this Court held proceedings on the Parties' Motion. *See* Doc. No. 29. During these proceedings, the Court expressed a number of concerns with the proposed Settlement Agreement (Doc. No. 25-1). Because of these concerns, the Court denied the Parties' Motion to Certify Class and for Preliminary Approval of the Parties Settlement Agreement. During the May 8 proceedings, the Court directed the Parties to confer regarding the Court's concerns and then re-

submit the Parties' revised Settlement Agreement. The Parties have so conferred and re-submit the revised Settlement Agreement as Exhibit 1. The revised Agreement reflects the following changes from the initial Agreement pursuant to the Court's concerns.

- 1) At the time of the May 8 Hearing, Opt-in Plaintiff Wesley Yoakum had not filed a consent to participate. Mr. Yoakum filed a consent to participate on May 9, 2018. *See* Doc. No. 31.
- 2) Given the Opt-Out nature of Plaintiffs' Arkansas Minimum Wage Act ("AMWA") claims, the Court expressed its concerns with approving the settlement of Plaintiffs' AMWA claims unless Defendant agreed to mail the checks to all class members as opposed to requiring them to first submit claim forms. Paragraphs 6.a. and 6.c. of the revised Agreement reflect that Baldor has agreed to send checks to class members for half of the settlement shares awarded to each class member without first requiring them to submit claim forms.
- 3) The Court instructed the Parties that if Defendant wanted to obtain a release of class members' Fair Labor Standards Act ("FLSA") claims, each participant would have to file consents with the Court. The Parties have incorporated this provision into Sections 9.b. and 12.c. of the revised Agreement. The Parties have also agreed to condition payment of half of each class member's share on their completion of a consent to participate such that only those class members agreeing to release their FLSA claims against Defendant will be paid this half of their respective settlement share.
- 4) The Parties agreed to remove the provision in the Agreement that would have voided the settlement if the Court awarded less than \$40,000 in attorney's fees. Pursuant to the Court's directive, the revised Agreement also contemplates that Plaintiffs will apply to the Court for payment of attorney's fees in Section 6.d.
- 5) Pursuant to the Court's directive, the Parties entirely re-drafted Exhibit D, the Class Notice, to fully explain the difference between the Opt-In and Opt-Out provisions of the FLSA and AMWA, respectively.

This Motion expressly incorporates Exhibit D to the Parties' initial Motion for Approval, which was filed under seal with this Court (Doc. No. 26). Exhibit D to the initial Motion listed the settlement shares for each class member. This Exhibit is expressly incorporated herein as Exhibit E.

For the foregoing reasons and the reasons explained in the Parties' initial Motion (Doc.

No. 25), the Court should grant preliminary approval of the proposed revised Settlement Agreement and enter the accompanying Order of Preliminary Approval included in Exhibit C.

Respectfully submitted this 26th day of June, 2018.

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